(1) CAV/K (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
W.P. No.2309 of 2002

GANESH RAM SAHU SON OF SHRI GENDRAM SAHU AGED 40 YEARS RESIDENT OF GRAM KIRITPUR TAHSIL BERALA DISTRICT DURG

PETITIONER

VERSUS

1. **STATE OF CHHATTISGARH THROUGH THE SECRETARY, MINISTRY OF PANCHAYAT AND SOCIAL WELFARE, DAU KALYAN SINGH BHAWAN, RAIPUR**
2. **THE UPPER COLLECTOR, BEMETARA ,DURG**
3. **THE STATE OF MP THROUGH THE SECRETARY, MINISTRY OF PANCHAYAT AND SOCIAL WELFARE, VALLABH BHAWAN, BHOPAL**
4. **PAWAN KUMAR CHAUHAN SON OF SHRI BHAGELA CHAUHAN AGED ABOUT 30 YEARS RESIDENT OF VILLAGE KIRITPUR TEHSIL BERALA DISTRICT DURG**

RESPONDENTS

P.R. No. 2298/02 Presented by Shri G.R. Sahu dated 23/10/02

RECEIVED COPY. 23/10/02 CLERK TO A.G. BILASPUR

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA FOR THE ISSUANCE OF WRITS IN THE NATURE OF MANDAMUS, CERTIORARI AND/OR ORDER(S), AND/OR DIRECTION(S) IN THE NATURE OF WRITS

The humble petition of the Petitioner above named

MOST RESPECTFULLY SHOWETH

22/10/02

77

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : **Hon'ble Shri H.L. Dattu, CJ &**
Hon'ble Shri V.K. Shrivastava, J

WRIT PETITION NO. 2309/2002

PETITIONER Ganesh Ram Sahu

Versus

RESPONDENT State of Chhattisgarh & Others

Present :

Shri B.P. Sharma, counsel for the petitioner.

Shri Prashant Mishra, Addl. Advocate General for the State.

ORAL ORDER

(Passed on 26th February, 2007)

The following oral order of the Court was passed by **H.L. Dattu, C.J.**

Petitioner, a Sarpanch of Gram Panchayat, Kiritpur, Durg, is before us in this writ petition filed under Article 226 of the Constitution of India, inter alia, questioning the constitutional validity of Section 36 (1) (m) of the MP/CG Panchayat Raj Adhiniyam as unconstitutional, void, non est and not sustainable in law.

2) The consequential reliefs sought in this writ petition are :

a) To quash the show cause notice No. 489/Pra.Upper Collector/2003 dated 24/02/2005 issued by the Additional Collector and;

b) Consequent action of removing the petitioner from the post of Up-Sarpanch by the Upper Collector, Bemetra

78

is beyond his competence and also illegal and not sustainable in law:

c) Lastly, to declare that the petitioner is entitled to work as Up-Sarpanch for the said area for the remaining period.

3) In so far as the first prayer sought for by the petitioner in this writ petition is concerned, the same is no more res integra in view of the law declared by the Hon'ble Apex Court in the case of **Javed and others Vs. State of Haryana and others**, reported in **(2003) 8 SCC 369**.

4) In view of the above, the request of the petitioner to declare that the Section 36 (1)(m) of the MP/CG Panchayat Raj Adhiniyam as unconstitutional cannot be granted by us. Accordingly, the said prayer is rejected.

5) Shri Sharma, learned counsel appearing for the petitioner, after arguing the matter for quite some time in support of the second relief sought for in this writ petition, requests us to permit him to withdraw this writ petition with liberty to file a fresh writ petition questioning the show cause noticed dated 24/02/2005 and the consequential order passed by the Additional Collector.

6) The request of learned counsel for the petitioner is not seriously opposed by Shri Prashant Mishra, learned Addl. Advocate General for the State. Therefore, the following:

Order

1. The first prayer sought for by the petitioner in this writ petition is rejected in view of the law declared

by Hon'ble the Apex Court in the case of **Javed (supra)**.

2. In so far as second prayer is concerned, the petitioner is at liberty to question the same before the learned single Judge, if he so desires, by filing a fresh writ petition.

3. All the other contentions of both the parties are left open.

7) Ordered accordingly.

Sd/-
Chief Justice

Sd//-
V.K.Shrivastava
Judge